STATEMENT OF HILDA MANUEL
DEPUTY COMMISSIONER OF INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON S. 985,
THE INTERGOVERNMENTAL GAMING AGREEMENT ACT OF 1999

July 21, 1999

Good morning Mr. Chairman and members of the Committee. I am pleased to present the Administration's views on S. 985, the Intergovernmental Gaming Agreement Act of 1999. We strongly support this legislation and will offer some technical amendments. Accompanying me today is Mr. Derril Jordan, Associate Solicitor for Indian Affairs.

As you well know, since the Indian Gaming Regulatory Act (IGRA) was passed in 1988, the Department of the Interior has approved over 200 Class III gaming compacts between states and Indian Tribes in 25 states. These compacts have enabled Indian tribes to establish Class III gaming establishments that have generated much needed revenue for the tribes, and thus reduce their reliance on Federal dollars to implement a variety of tribal initiatives. As required by IGRA, gaming revenues are being devoted primarily to providing essential government services such as roads, schools, hospitals and economic development. *See* Proposed Rules, 63 FR 3289. These gaming establishments have led to a direct increase in employment by providing jobs in the gaming and gaming-related, such as food service, industries, thereby rejuvenating economically-depressed communities through increased employee buying power.

One of the crucial aspects of the compacting process in Section 11 of IGRA is the ability of Indian tribes to initiate a lawsuit in Federal district court arising from the failure of a State to enter into compact negotiations with the tribe, or to conduct such negotiations in good faith. The tribes' ability to sue the States under IGRA has been greatly compromised following the U.S. Supreme Court's 1996 decision in *Seminole Tribe v. State of Florida*, that a state may assert an Eleventh Amendment immunity defense to avoid a lawsuit brought by a Tribe under IGRA alleging that the state did not negotiate in good faith. Dismissal of the good faith lawsuit on immunity grounds effectively permits the state, if no further action is taken, to veto Class III gaming by a Tribe when other Class III gaming would be permissible under IGRA.

In response to the stalemate created by the *Seminole* decision, the Department published a rule in the *Federal Register* on April 12, 1999, to enable Indian Tribes to obtain Secretarial "procedures" for Class III gaming when a Tribe has been unable to negotiate a compact with the state, and the state has raised an Eleventh Amendment immunity defense to a lawsuit initiated by the Tribe in the Federal court. The rule became effective on May 12, 1999. To date, half a dozen Tribes have submitted applications for Class III gaming procedures under the rule.

S. 985 addresses the problems created by the *Seminole* decision by eliminating good faith lawsuits brought against states, while preserving the opportunity of Tribes to engage in Class III

gaming activities permitted under IGRA's standards. We believe that the Secretary of the Interior's legal authority to promulgate the Class III procedures rule is supported by the statutory delegation of powers contained in IGRA and the broad delegation of Federal authority over Indian affairs found in 25 U.S.C. §§ 2 and 9. We note, however, that the authority of the Secretary to promulgate the Class III procedures regulation has been challenged in a lawsuit filed by the States of Florida and Alabama. While we believe that the Secretary's authority will be upheld in that action, we nonetheless support S. 985 as a way of getting past, once and for all, the impasse created by *Seminole*.

We look forward to working with you and the Committee staff and offer the following technical amendments to S. 985:

First, in Section 11(d)(3)(B)(iii)(I)(bb), we believe that, although standards are specified in IGRA, the bill should provide a clear indication whether other standards should be included or some of those currently existing should not be followed in determining when a state has failed to negotiate in good faith, especially since the bill elsewhere subjects the Secretary's determination to judicial review by the U.S. District Court for the District of Columbia.

Second, in Section 11(d)(3)(B)(iii)(III), we believe that the bill should specify the appropriate State official or officials to whom the Indian Tribe must provide a copy of the mediation request.

Third, in Section 11(d)(3)(B)(iii)(V), we believe that the words "subclause (IV)" on line 11 should read "subclause (VI), and the words "clause (iv)" on line 14 should read "subclause (VII).

Fourth, we believe the legislation should more clearly state that the Secretary is authorized to promulgate rules governing the issuance of Class III gaming procedures if the state declines to participate in the mediation process pursuant to Section 11(d)(3)(B)(iii)(V). Although the authority exists within IGRA and Federal statutes cited previously, the Secretary's authority has still been challenged and we believe an express statement will obviate questions regarding the Secretary's authority to promulgate the rules.

Finally, we believe that in Section 11(d)(3)(C), line 20, the word "or" should be replaced by the word "and", to clarify that both the state and the Indian Tribe must consent to state regulation of gaming.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.